UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

PRIME HEALTHCARE SERVICES–ENCINO, LLC
D/B/A ENCINO HOSPITAL MEDICAL CENTER
Respondent

and Cases 31–CA–066061
31–CA–070323

SEIU LOCAL l21RN
Charging Party Union

and Case 31–CA–080554

SEIU UNITED HEALTHCARE WORKERS–WEST
Charging Party Union

PRIME HEALTHCARE SERVICES–GARDEN GROVE, LLC D/B/A GARDEN GROVE HOSPITAL & MEDICAL CENTER
Respondent

and Case 21–CA–080722

SEIU UNITED HEALTHCARE WORKERS–WEST
Charging Party Union

John Rubin, Esq., for the General Counsel.
Joseph Turzi, Esq. & Colleen Hanrahan, Esq. (DLA Piper LLP (U.S.)), for the Respondents.
David Adelstein, Esq. (Bush Gottlieb), for the Charging Party SEIU Local 121RN.
Monica Guizar, Esq. (Weinberg, Roger & Rosenfeld), for the Charging Party SEIU UHW-West.[1]

DECISION

STATEMENT OF THE CASE

JEFFREY D. WEDEKIND, Administrative Law Judge. The consolidated complaint in this matter alleges that two Southern California hospitals owned by Prime Healthcare Services—Encino Hospital Medical Center (Encino) and Garden Grove Hospital & Medical

[1] Jonathan Cohen, Esq. (Rothner, Segall & Greenstone) made a limited appearance for the SEIU International Union to address subpoena issues.

Center (Garden Grove)—unlawfully failed and refused to bargain in good faith in certain respects with SEIU Local 121RN and/or SEIU United Health Care Workers–West (UHW) after their collective-bargaining agreements expired in March 2011. Specifically, the complaint alleges that the hospitals have unlawfully failed: (1) to continue paying anniversary step wage increases to the unit employees as provided in the expired contracts; and (2) to provide information that the Unions requested in April 2011 and January 2012, during the new contract negotiations, regarding the unit employees' healthcare plans, in violation of Section 8(a)(5) and (1) of the National Labor Relations Act (NLRA).

The hospitals deny that they violated the Act in either respect. They assert that the anniversary step wage increase provisions did not survive contract expiration and that the requested healthcare information was not relevant to the negotiations and was requested in bad faith and to harass. The hospitals further assert that they had no legal obligation to bargain with UHW at all, as the Union disqualified itself, forfeiting its statutory right to represent the unit employees at the hospitals, because of its strategic partnership with Kaiser Permanente, Prime's competitor, and its public campaign of false and fraudulent attacks to disparage Prime's reputation and drive Prime out of the healthcare market.[2]

The hearing to address the foregoing allegations and defenses opened in Los Angeles, California on April 30, 2013.[3] However, the hearing was postponed at that time, before the taking of any testimony, due to an unresolved dispute over subpoenas that Respondents had served on the Charging Party Unions and the SEIU International Union relating to the Respondents' disqualification defense. The hearing resumed approximately 14 months later, on June 10–12, 2014,[4] and the parties subsequently filed their posthearing briefs on August 25, 2014.

After carefully considering the parties' briefs and the entire record, for the reasons set forth below, I find that the Respondents had an obligation under the Act both to continue the anniversary step wage increases and to provide the Unions with the requested information about the healthcare plans. I also reject the Respondents asserted disqualification defense to the allegations involving UHW.

I. FACTUAL BACKGROUND

Prime owns and operates hospitals in various states, including California.[5] It purchased the two subject hospitals in Encino and Garden Grove from Tenet Healthcare in June 2008. It

[2] Respondents initially asserted that 121RN was likewise disqualified, but withdrew this defense during the hearing (Tr. 68–69).

[3] There is no dispute, and the record establishes, that the Respondent hospitals satisfy the commerce standards for NLRB jurisdiction.

[4] The Respondents filed a post-hearing motion to supplement the record on June 18, which I granted in part (with respect to R. Exhs. 821 and 824–826) by order dated July 2 (ALJ Exh. 1).

[5] The record contains various references to "Prime Healthcare," "Prime Healthcare Services," and "Prime Healthcare Management." Although there is considerable ambiguity in the record about the relationship between these entities and the Respondent hospitals, there appears no question that they are, in fact, related and are involved in the ownership, management, or operation of the hospitals. For simplicity sake, they are referred to here cumulatively as "Prime."

continued thereafter to operate the hospitals in basically unchanged form, and retained a majority of the employees. It also recognized UHW, which had represented the service and technical employees at Encino and Garden Grove, and 121RN, which had represented the registered nurses at Encino. Prime adopted the three collective-bargaining agreements between the Unions and Tenet covering those units, which were effective from January 1, 2007 through March 31, 2011.

In addition to Encino and Garden Grove, UHW represents employees at certain other Prime hospitals, including Centinela Hospital Medical Center in Inglewood, which Prime purchased in late 2007. UHW also represents employees at hospitals owned by Kaiser, Prime's competitor, and is a member of the National Coalition of Kaiser-Permanente Unions (the Coalition). Since 1997, the Coalition and Kaiser have been party to a National Labor-Management Partnership Agreement (LMP). Pursuant to the LMP, Kaiser has agreed, among other things, to "fully integrate" the participating unions into the company's "strategic decision-making process" at all levels, national, regional, and local.[6] In return, the unions have agreed, among other things, to assist Kaiser in "achieving and maintaining market leading competitive performance"; to "expand [Kaiser's] membership in current and new markets"; to "market[] [Kaiser] as the employer and care provider of choice," including "to new and existing union groups," in order to increase enrollment in the Kaiser Foundation Health Plan; and to "work in a proactive manner" on "growth strategies," including "new geographics and regions, mergers and acquisitions." Consistent with these obligations, the unions have agreed to "focus . . . on real external threats" to Kaiser, including "competition," and to annually develop with Kaiser a "joint" marketing plan that would include, among other things, consistent data collection, education programs, and communication strategies and tools. Kaiser and the Coalition have also agreed to establish certain "joint education" trust funds, as well as a joint labor-management partnership trust fund to pay for partnership administration and activities. As of 2010, Kaiser contributed $10 million annually, and employees 9 cents per hour, to the partnership trust fund.[7]

Effective January 1, 2010, about 18 months after Prime purchased the Encino and Garden Grove hospitals, the employees represented by UHW and 121RN at those facilities became covered by Prime's EPO and PPO medical plans.[8] The Prime EPO (exclusive provider organization) plan was not an insurance plan, but a fee-for-service plan. Under that plan, subject to certain limited exceptions (e.g. lack of access or availability), the employees obtained their medical services at Prime facilities or doctors affiliated with those hospitals at a discounted rate.

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[6] According to the LMP, this "does not mean co-management, but rather full participation in the decision-making forums and processes at every level of the organization."

[7] Tr. 517; R. Exhs. 93, 95–98, 435, 819. UHW President Dave Regan signed the 2010 LMP (R. Exh. 98) as UHW "Trustee," and is also listed as a member of the LMP Strategy Group on the LMP website, www.lmpartnership.org (R. Exh.438). Representatives of the SEIU International and other SEIU locals also signed the 2010 LMP. In addition, an attachment to the 2010 LMP lists the UHW and other bargaining units at Kaiser hospitals. See also *Permanente Medical Group, Inc*., 358 NLRB No. 88 (2012).

[8] Tr. 316, 555–556; and GC Br. 14. It is not entirely clear how this came about. See also Jt. Exhs. 6, 13; and *Garden Grove Hospital & Medical Center*, 357 NLRB No. 63 (2011). However, the manner in which the Prime EPO and PPO plans were initially implemented at Encino and Garden Grove in January 2010 is not at issue here.

Under the Prime PPO (preferred provider organization) plan, the employees could join other networks such as Anthem.[9]

Around the same time, UHW began a so-called "corporate accountability campaign" against the Prime. UHW at that time was engaged in contentious contract negotiations with Prime at Centinela. One of hospital's proposals in those negotiations was to replace the unit employees' current medical insurance program with Prime EPO/PPO plans similar to those at Encino and Garden Grove.[10] UHW had also previously been involved in labor disputes with Prime at other hospitals, including Garden Grove.[11] UHW began publicizing these labor disputes and campaigning against Prime's attempts to acquire additional hospitals in California. In particular, UHW criticized Prime for cutting staff, reducing wages and benefits, and limiting access to care in order to increase profits. See UHW press releases dated April 2 and June 3, 2010 (R. Exhs. 201, 203).

UHW also began publicly questioning the quality of care and billing practices at Prime hospitals. Sometime in 2010, UHW prepared and circulated a 24-page report entitled "Septicemia at Prime Hospitals" (R. Exh. 91).[12] Citing Medicare billing data, UHW reported that there had been an unusually high rate of septicemia among Medicare patients at Prime hospitals in 2008. Specifically, it reported that Prime operated five of the six hospitals with the highest septicemia rates in the U.S.; that all 12 Prime hospitals, including Garden Grove and Encino, were in the top 10 percent of hospitals with respect to septicemia rates; and that the average septicemia rate at Prime's hospitals (15.7 percent) was more than three times the national average (4.8 percent), and 70 percent higher than the second-highest health system (9.2 percent).

The report concluded that a likely explanation for this was "upcoding," i.e. that Prime was incorrectly coding infections as MS-DRG 038.9 (the Medicare Severity-Diagnosis Related Group code for unspecified septicemia) to obtain the higher Medicare reimbursement rate for such infections. In support, the report cited data indicating that, despite the relatively high numbers of Prime Medicare patients coded with septicemia, the mortality rate of such patients was relatively low (only 13 percent compared to 21 percent for other hospitals), but about the

[9] Tr. 145, 147, 224–229, 316, 596–597, 631. See also R. Exh. 37 (the 2011 summary description of the EPO plan). The vast majority (95 percent) of employees at Prime hospitals are in the EPO plan (Tr. 632).

[10] See *Centinela Hospital Medical Center*, 31–CA–030044, JD(SF)–17–13, 2013 WL 1561256 (April 12, 2013) (ALJ Etchingham), exceptions filed June 14, 2013.

[11] See *Garden Grove Hospital*, above (finding that Garden Grove violated Section 8(a)(5) of the Act by rescinding the unit employees' reserve sick leave benefit in April 2009).

[12] Although UHW refused to acknowledge at the hearing that it authored the 2010 septicemia report, it is clear from the document itself and the record as a whole that UHW did so. See the UHW's subsequent "Care and Coding" report, R. Exh. 92, p. 3, discussed infra (referring to the 2010 septicemia report as "our recent report"); and R. Exhs. 209, 210. See also Tr. 232. As for when UHW prepared and distributed the undated report, see R. Exh. 222 (February 2, 2010 letter from CtW Investment Group to Medical Properties Trust); R. Exh. 202 (May 26, 2010 letter from the California Bureau of Medi-Cal Fraud to UHW Counsel Dave Regan); and R. Exh. 204 (July 1, 2010 letter from Congressmen Pete Stark and Henry Waxman to the Department of Health and Human Services Inspector General).

same for all Medicare patients (4.5 percent at Prime compared to 4.7 percent at other hospitals). The report noted that this could also explain why Prime hospitals scored well in the Thomson Reuters "Top 100 Hospitals" series; by upcoding patients with a low-mortality DRG to a high-mortality DRG like septicemia, the actual mortality rate (and length of stay) would be lower than expected, making Prime look better by comparison to its competitors.

The report concluded that another possible explanation was that there were infection control problems at Prime hospitals, raising "serious concerns about worker and patient safety." In support, the report cited higher than average levels of septic shock and skin ulcers at several Prime hospitals, which were not separately coded.

The report also analyzed various other possible explanations for the high septicemia rates at Prime hospitals, including the possibility that the infections were acquired at another location before admission, such as at a nursing home; that Prime hospitals treat medical patients or conditions that are more susceptible to septicemia; or that the hospitals already had elevated septicemia rates when Prime acquired them. However, the report concluded that these factors were not supported by the available data, and were unlikely explanations. Rather, the report concluded that there was

> a high probability of serious breakdowns in patient care and/or possible Medicare fraud at Prime hospitals, raising troubling questions about the source of Prime's profitability, and casting a shadow over Prime's apparently ill-gotten ["Top 100 Hospitals"] awards.

Thereafter, in January 2011, UHW also prepared and distributed a 17-page "update" of its 2010 septicemia report (R. Exh. 92). This second report, entitled "Care and Coding at Prime Healthcare Services," did a similar analysis of more recent 2009 Medicare billing data and reported "comparable" results, including that Prime operated seven of the 12 hospitals with the highest septicemia rates in the U.S.; that 11 of 13 Prime hospitals were in the top 5 percent nationally with respect to such rates; and that the average septicemia rate at Prime's hospitals (15.1 percent) was almost three times the national average (5.2 percent) and 50 percent higher than the second-highest comparable health system. The report also again reported that Prime had relatively low septicemia mortality rates (13 percent) compared to other hospitals (19 percent), in contrast to comparable mortality rates overall (4.3 percent and 4.4 percent, respectively). It also reported that Prime had one of the highest rates of very short inpatient stays among all U.S. health systems. The report again explained how this could be due to upcoding for septicemia ("The easy explanation is simply that you don't die if you aren't really sick"), and could lead to inflated quality scores in "Top 100 Hospitals" rankings.

The "care and coding" report also addressed malnutrition rates at Prime hospitals, reporting that they were likewise the highest in the U.S. Specifically, it reported that all Prime hospitals were in the top 7 percent for the highest total malnutrition rate nationally; that 12 of 13 Prime hospitals were in the top 4 percent for the highest severe malnutrition rate nationally; and that Prime's severe malnutrition rate (7.7 percent) was seven times the national average (1.1 percent). It also reported that Prime operated 8 of the 9 California hospitals with the highest malnutrition rates, and 10 of the 11 California hospitals with the highest severe malnutrition rates. As with the Prime's high septicemia rates, the report stated that inaccurate billing was the most likely explanation for these high malnutrition rates.

Following release of the reports, UHW called for a "thorough investigation" of Prime hospitals. It also urged state officials to deny licenses to Prime until the investigations were completed, and the passage of state legislation that would prevent Prime or any other company from buying and operating a hospital without a license. It also wrote letters to Prime network physicians repeating its criticisms of Prime's corporate takeover and labor practices and the findings in its earlier reports regarding septicemia and malnutrition rates at Prime hospitals. The letters urged the physicians to assist UHW in "exposing the impact of the corporation's practices" and to report any information about such practices to the HHS Office of the Inspector General. (R. Exhs. 216, 210, 213, 218, 254, 510.)

Prime, of course, responded. Both of the UHW reports stated that the Union was engaged in labor disputes with Prime,[13] and Prime accused UHW of preparing and distributing the reports to "extort concessions" from Prime in those disputes. As for the reports' findings and conclusions, Prime acknowledged that its hospitals had higher rates of septicemia, but said the rates reflected the company's emphasis on "early detection and treatment" of the illness, resulting in more cases getting reported, even in early stages. It also said that the rates might be elevated because "sicker patients are being admitted" at Prime due to the company's emphasis on emergency room admissions. Prime also disputed UHW's conclusion in the reports that the lower septicemia mortality rate suggested upcoding. Prime said the lower mortality rate instead reflected Prime's emphasis on treating septicemia early and aggressively. Finally, Prime insisted that the malnutrition diagnoses at its hospitals were likewise accurate.[14]

In the meantime, in September and October 2010, Prime began meeting with UHW to negotiate new collective-bargaining agreements covering the service and technical units at Encino and Garden Grove. A few months later, in January 2011, Prime likewise began meeting with 121RN to negotiate a new agreement covering the registered nurses unit at Encino. The lead negotiator for the hospitals in all three negotiations was Prime in-house labor attorney Mary

[13] The January 2011 care and coding report also explained that UHW was conducting the "corporate accountability campaign" because of the interrelationship or correlation between poor treatment of workers and irresponsible and unethical corporate behavior in other areas.

[14] See R. Exhs. 105, 212 (October 11, 2010 and February 13, 2011, California Watch articles). See also Prime Senior Labor Counsel Mary Schottmillier's testimony, Tr. 506–507 (October 2010 article accurately reported Prime's comments), Tr. 503 (Prime publicly responded to UHW's allegations numerous times), and Tr. 504 ("Prime's position is and continues to be that the whole attack on septicemia, malnutrition, et cetera, [is] just an effort by the SEIU to extort concessions from us"). The record indicates, and Respondents acknowledge, that state and federal authorities did, in fact, open investigations into UHW's allegations. See, e.g., R. Exhs. 105, 208, 210; and R. Br. 33 ("UHW's efforts resulted in investigations of Prime hospitals by the U.S. Department of Health and Human Services, the California Attorney General, [and] the [California Department of Public Health]."). However, no evidence was presented regarding their results. The only evidence Respondents offered regarding the results of any investigation into UHW's allegations was a December 13, 2010 letter from a private accreditation organization, Healthcare Facilities Accreditation Program (HFAP). The letter stated that HFAP had conducted a 1-day "onsite survey" in November 2010 regarding allegations of up-coding/overbilling and infection control problems at Chino Valley Medical Center (one of the Prime hospitals listed in UHW's 2010 report with an unusually high septicemia rate) and found them "not substantiated" (R. Exh. 810).

Schottmiller. Schottmiller was hired by Prime Healthcare Management in January 2010 specifically because of her experience with union corporate campaigns when she worked for First Group America, and she had served as Prime's lead negotiator at Centinela since that time.[15] Richard Ruppert was the lead negotiator for UHW, and Judith Serlin was the lead negotiator for 121RN.

The parties did not reach any new agreements before the existing contracts expired on March 31, 2011, however. Indeed, they had not even begun bargaining over economic items by that time. Further, in early May, Schottmiller sent letters to Ruppert questioning "whether the bargaining process has been compromised." Schottmiller was concerned—based on the LMP between Kaiser and the Coalition and UHW's corporate campaign against Prime and related 2010 information requests at Centinela (which specifically sought data on septicemia and mortality rates)[16]—that the SEIU International and its affiliated locals might be working together with Kaiser to exclude Prime from the California healthcare market. Schottmiller therefore requested a variety of information and documents regarding the relationship and communications between SEIU and its affiliated locals and Kaiser, particularly with respect to Prime's and Kaiser's competitive position in the healthcare market. (Tr. 516–518; R. Exhs. 22, 22a.)

Ruppert responded about a month later, on June 20. He declined to provide any of the requested information on the grounds that the requests should have been directed to the SEIU International, were "overly broad" and "neither relevant nor necessary to the negotiations" at Encino and Garden Grove, and appeared to have been made "merely to harass UHW." (R. Exh. 23.)

Several months later, on November 15, 2011, Prime filed an antitrust suit against SEIU, UHW, and Kaiser in federal district court. The complaint alleged that the defendants had unlawfully conspired together to eliminate Prime from the healthcare services market in violation of Sections 1 and 2 of the Sherman Act. In support, the complaint cited the LMP, the efforts to prevent Prime from acquiring additional hospitals, the 2010 and 2011 septicemia and care-and-coding reports, and various other alleged actions. As relief, the complaint requested treble damages and a permanent injunction restraining the defendants from continuing their "collusive corporate campaign" to disparage and destroy Prime. On August 30, 2012, prior to discovery or trial, the federal district court granted Kaiser's motion to dismiss the complaint without prejudice to filing an amended complaint. *Prime Healthcare Services, Inc. v. SEIU* et al., 2012 WL 3778348 (S.D. Cal.). Approximately a year later, on July 25, 2013, the court also granted the defendants' motions to dismiss the amended complaint without prejudice. 2013 WL 3873074. Prime thereafter appealed the dismissal to the Ninth Circuit, which remains pending. [17]

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[15] See Tr. 324, 337; R. Exh. 3; and *Centinela Hospital*, above.

[16] See id.

[17] I take judicial notice that, in late August 2014, Prime also filed a federal civil action against SEIU, UHW, and the Change to Win (CtW) union coalition under the Racketeering Influenced and Corrupt Organizations Act (RICO) based on many of the same operative facts and asserting many of the same allegations as in the federal antitrust action. See *Prime Healthcare Services, Inc. v. SEIU* et al., 2014 WL 5422631 (N.D. Cal. Oct. 24, 2014) (transferring action to southern district).

Respondents did not file an unfair labor practice charge with the NLRB, however. Nor did they unilaterally withdraw recognition from UHW. Notwithstanding their asserted defense in this proceeding that UHW is disqualified from representing their employees at Encino and Garden Grove, as of the June 2014 hearing they continued to recognize UHW as the unit employees' bargaining representative, continued to maintain the status quo under the expired labor agreements (aside from the disputed issue here with respect to ceasing anniversary step wage increases),[18] and continued to meet and negotiate on a regular basis with UHW (and 121RN) over new agreements (Tr. 164, 561, 579, 635).

II. Alleged Unfair Labor Practices

A. The Anniversary Step Wage Increases

All three of the expired agreements—the 121RN and UHW agreements at Encino and the UHW agreement at Garden Grove—contained identical provisions regarding annual and anniversary step wage increases. In relevant part, they provided as follows:

> ARTICLE 13 - COMPENSATION
>
> Sec. 3. Annual Hospital Wide Increases. July 1, 2010. The wage scales shown in the Appendices will be implemented. Placement of bargaining unit members on the Wage Scales will be in accordance with the Implementation section of this Article. No bargaining unit member will receive a wage increase greater than 9.25% in any twelve (12) month period. No bargaining unit member (including those above the appropriate step) will receive a wage increase of less than 3%.
>
> Sec. 5. Annual increases/Advancing through the steps.
>
> In addition to the above hospital-wide annual increases, beginning July 1, 2008, individual employees shall receive Anniversary Step Increases in accordance with the wage scales in the following manner:
>
> Full and part time employees: Employees who are at or below the scale on the anniversary date of their most recent date of hire shall advance to the next step on the wage scale on that anniversary date, subject to the annual caps provided in Section 3 above, which limit the maximum increase any employee may receive in any twelve (12) month period. Employees who are above the scale shall not receive a step increase on their anniversary date. However, employees who are less than one full step above scale shall advance to the next step on their anniversary date, again subject to the annual caps provided in Section 3 above.

[18] In April 2014, I granted the General Counsel's motion to consolidate an additional complaint allegation (31-CA-101389) alleging that Encino unilaterally altered the procedure for posting vacancies in March 2013. However, the General Counsel withdrew that complaint at the hearing on June 10 based on newly discovered evidence (Tr. 8).

(Jt. Exhs. 2–4.) Pursuant to these provisions, Encino and Garden Grove granted anniversary step wage increases to the unit employees during the life of the contracts subject to the 9.25 percent annual cap (Jt. Exh. 1).

At the parties first postexpiration bargaining sessions at Encino and Garden Grove in April and June 2011, respectively, UHW lead negotiator Ruppert discussed with Schottmiller what would happen to the contractual terms and conditions of employment of the service and technical unit employees. Ruppert identified those terms in the expired Encino and Garden Grove contracts that UHW believed survived as a matter of law, including anniversary step wage increases, and Schottmiller agreed (Tr. 183–186, 260–261, 265–267).[19] 121RN lead negotiator Serlin likewise told Schottmiller during negotiations that 121RN believed the anniversary step wage increases continued postexpiration, and Schottmiller agreed with Serlin as well (Tr. 572).

Consistent with the foregoing, over the next 7 months, Encino continued to approve and award anniversary step wage increases to eligible employees in the 121RN and UHW units. However, Garden Grove did not do so for eligible employees in the UHW unit at that hospital.[20] Further, in October or November 2011, after reviewing the provisions of the expired contracts and the law with Barbara Back, Encino's HR manager, Schottmiller concluded that her initial agreement with the Unions that the hospitals would continue the increases was mistaken. Specifically, she concluded that the provisions in section 5 regarding anniversary step wage increases did not survive or carryover because they referred back to the provisions in section 3, which undisputedly did not survive or carryover. Accordingly, on or about November 17, 2011, she ordered that no further such increases be given at Encino. (Tr. 566–569, 572, 575, 578, 602, 757.) Schottmiller did not, however, inform UHW and 121RN of this at the time. Rather, both Unions were informed when they subsequently inquired about the missing increases in late November or December 2011 and February and March 2012. (Tr. 102, 186–189, 262–263, 586.)

In agreement with the General Counsel, I find that the Respondents had an obligation under the Act to continue paying anniversary step wage increases to eligible unit employees after the contracts expired. It is well established that such contractual wage provisions are a mandatory subject of bargaining, and that an employer must continue them in effect postexpiration until the parties have reached either a new agreement or a valid impasse, unless the employer can show that the union clearly and unmistakably waived the right to bargain over ceasing them. See *Southwest Ambulance*, 360 NLRB No. 109 fn. 1 and JD at 13–17 (2014) (longevity pay), and cases cited there.

[19] Although Ruppert did not recall whether he had a similar discussion with Schottmiller with respect to the anniversary step wage increases at Garden Grove (Tr. 198–200), I credit the testimony of UHW Steward Kimberly Davis, who was also on the UHW bargaining team, that such a discussion occurred.

[20] Jt. Exhs. 1, 18; R. Exhs. 64, 64A; GC Exh. 13; Tr. 775, 781–788. As indicated in the cited exhibits, not all employees with anniversary dates at Encino received anniversary step wage increases during the first 7 months after the contracts expired. However, the General Counsel appears to concede that this was because only a minority of employees typically qualified for the wage increases for various reasons, and only alleges a violation at Encino as of November 17, 2011, when Schottmiller ordered the wage increases to cease. See the January 31, 2013 consolidated complaint and subsequent amendments thereto (GC Exhs. 1(kkk), and 2, pars. 11, 12), and the General Counsel's post-hearing brief at 41, 80.

Respondents have failed to show that there was a clear and unmistakable waiver here. There is no language in section 5 indicating that the anniversary step wage increases would end when the contracts expired. Nor do the references in section 5 to annual wage increases or the 9.25 percent annual cap on total wage increases clearly indicate that the anniversary step wage increases would end. The only reference in section 5 to the annual wage increases is the statement that employees would receive anniversary step wage increases "in addition to" annual wage increases. This statement does not clearly indicate that the employees would receive the former only if they received the latter. Employees also received a variety of other benefits under the contracts in addition to annual wage increases, and there is no contention that they ended just because the annual wage increases ended when the contracts expired. As for the reference in section 5 to the 9.25 percent annual cap on total wage increases, this reference likewise did not in any way condition the continuation of anniversary step wage increases on the continuation of annual wage increases.

Respondents nevertheless argue that no unilateral change violation can be found because the foregoing references provided a "sound arguable basis" for Schottmiller's interpretation that the anniversary step wage increase provisions were not intended to survive. However, the "sound arguable basis" standard applies only to alleged midterm modifications of agreements, not to alleged postexpiration unilateral changes. See *Finley Hospital*, 359 NLRB No. 9 fn. 7 (2012), cited with approval in *Southwest Ambulance*, supra.[21] As indicated above, the test in the latter situation is whether there has been a "clear and unmistakable waiver" by the union. In any event, even if the "sound arguable basis" standard were applicable here, I would find that Respondents have failed to satisfy it for essentially the same reasons stated above, i.e. because the cited references in section 5 to annual wage increases and the 9.25 percent annual cap on total wage increases cannot by themselves reasonably be interpreted to mean that anniversary step wage increases were conditioned on annual wage increases.

Moreover, as indicated above, the Respondents (per Schottmiller, their lead negotiator and admitted agent) orally agreed with the Unions in April 2011, shortly after the contracts expired, that the anniversary step wage increases would continue at the hospitals. It is well established that oral agreements may be binding. See *Safeway Steel Products*, 333 NLRB 394, 400 (2001); *Kasser Distiller Products*, 307 NLRB 899, 903 (1992); and cases cited in *Young Women's Christian Assoc. of Western Massachusetts*, 349 NLRB 762, 771 fn. 8 (2007). And this generally includes oral agreements to continue terms under expired agreements. See *Cincinnati Newspaper Guild, Local 9 v. Cincinnati Enquirer, Inc*., 863 F.2d 439, 443 (6th Cir. 1988), citing *Inner City Broadcasting Corp. v. American Federation of Television and Radio Artists*, 586 F. Supp. 556, 559–560 (S.D. N.Y. 1984).

Finally, Encino repeatedly and regularly approved and granted such increases to employees in the 121RN and UHW units for 7 months after the contracts expired, until mid-November 2011. This was sufficient under Board law, even apart from the oral agreements, to

[21] See also *Bath Iron Works Corp*., 345 NLRB 499 (2005), affd. 475 F.3d 14 (1st Cir. 2007). As noted there (id. at 503), after a collective-bargaining agreement expires, the union has no recourse under either the grievance-arbitration clause, which normally does not survive contract expiration (*Litton Financial Printing Division v. NLRB*, 501 U.S. 190 (1991)), or 29 U.S.C. § 185, which authorizes unions to bring suit in federal district court against employers for violating contracts during their term.

prevent Encino from unilaterally ceasing such increases without notice or bargaining with 121RN and UHW. See *Garden Grove Hospital & Medical Center*, 357 NLRB No. 63 (2011) (Respondent Garden Grove violated 8(a)(5) by unilaterally rescinding reserve sick leave benefits 9 months after acquiring the hospital from Tenet, even though it had the right to and did set new initial terms, and had continued the benefits by mistake, due to clerical errors).[22]

B. The Unions' Information Requests

The complaint alleges that Respondents unlawfully refused to provide certain information to 121RN and UHW relating to Prime's EPO and PPO healthcare plans in response to written requests dated April 5, 2011 and January 12 and 25, 2012.

1. April 5, 2011 information request by 121RN

The first information request on April 5, 2011 was made by 121RN's research director, Maryanne Salm. At that time, the Union anticipated that Prime would make a healthcare proposal at Encino similar to the one it made at Centinela, i.e. that Prime would propose continuing its EPO and PPO plans with significant increases in employee copays, deductibles, and premiums. Accordingly, Salm submitted a written request to Schottmiller for certain information regarding the plans. Specifically, Salm requested the following information regarding employer costs, employee access to care, and the quality of care under the Prime EPO and PPO plans so that the Union could prepare its bargaining proposals.

Prime's cost of providing the healthcare. Salm stated that "insofar as Prime is the designated provider under the Prime employee health plans," the Union requested the following information "related to Prime's cost of providing care to bargaining unit employees":

> 1. Copies of all claims for coverage under the plan made by employees during the last year for care received at a Prime facility as well as copies of any correspondence or other documents with respect to the processing of those claims and the payments of those claims; [and]
>
> 2. A list of paid claims for care received at a Prime facility with all personal information redacted indicating the procedures for which payment was made and the cost to the plan for each such procedure.
>
> > a. For each of the procedures performed in Prime facilities, please provide a breakdown of the actual cost to Prime of each procedure (labor, overhead, purchased materials/pharmaceuticals etc);

[22] Contrary cases cited by Respondents are distinguishable. In *Eagle Transport Corp.,* 338 NLRB 489 (2002), the employer corrected an administrative error in a single paycheck. In *Foster Transformer Co.,* 212 NLRB 936 (1974), although the employer reduced an employee's wage rate after paying the higher rate for several years, the Board found no violation because the lower rate was "in line with [the employer's] uncontradicted policy of paying the applicable rate for the work performed," the reduction corrected "a plainly inequitable rate structure," and the union itself had "call[ed] attention to the inequity."

> b. For those cost breakdowns, please provide the detailed calculations upon which the cost figure was based, indicating how the actual costs for medical services, for administrative charges and for any other expenses were determined.

Employee access to care at Prime facilities. Salm stated that the Union also had "concerns that the limited number of services and providers available at Prime facilities unduly restricts our members' access to care." Accordingly, she requested:

> 1. Copies of all claims for coverage under the plan made by employees during the last year for care received at a non-Prime facility, as well as copies of any correspondence or other documents with respect to the processing of those claims and the payments of those claims; [and]
>
> 2. A list of paid claims for care received at a non-Prime facility with all personal information redacted indicating the procedures for which payment was made and the cost to the plan for each such procedure.

Quality of healthcare provided by Prime. Salm additionally stated that, "because employees are required to utilize services within the 'Prime Network' and our members have limited experience utilizing Prime facilities, the Union must carefully evaluate the quality of care at Prime hospitals." Accordingly, she requested:

> A list breaking down the quarterly number of in-patient discharges by MSDRG, broken down by age groups (0-17, 18-35, 36-50, 51-64, 65+), from July 1, 2009 to present, [specifying] the following:
>
> a. Quarter and calendar year;
> b. MS-DRG grouper version used;
> c. MS-DRG;
> d. Age group (0-17, 18-35, 36-50, 51-64, 65+);
> e. Number of cases;
> f. Average length of stay;
> g. Median length of stay; and
> h. Mortality rate.

(Jt. Exh. 5; Tr. 103–106, 171–173.)

Schottmiller responded by letter about 10 days later, on April 15. However, other than an updated physician list, she did not attach or otherwise provide the requested information. Instead, she asked for "clarification" of the requests and requested information from 121RN in return. Specifically, with respect to Prime's cost of providing care, she asked for an explanation of the proposals 121RN had made or anticipated making and how the requested information was relevant to the collective-bargaining negotiations and the Union's proposal. She noted in this regard that Encino was "not agreeable to any health care plan other than the EPO and PPO plans already implemented and agreed to" and was "not inclined to change that coverage, regardless of the cost issues you raise." She also requested that, to the extent 121RN believed such

information about Prime's plan was relevant, the Union provide "similar" information regarding its alternative proposal.

Schottmiller also disputed the relevance of the requested information about access to Prime facilities. She stated that out-of-network claims did not necessarily mean that Prime's services were limited or not conveniently available to employees; indeed, she said it was "silly" to suggest that there were problems with employee access to Prime's facilities and services given that "the covered employees report to work at the place where most of the services are provided." She therefore stated that the parties "should further discuss the reason for this request." As with information about employer costs, she also requested that, to the extent 121RN believed the requested information about access to Prime facilities was relevant, the Union provide "similar" information regarding its alternative proposal.

As for the request for information about quality of care at Prime facilities, Schottmiller stated that the request was "baffling" given that the care is provided "at the very hospitals in which your members and members of SEIU-UHW work." In an apparent reference to UHW's 2010 and 2011 septicemia and care and coding reports, she also noted that "the SEIU apparently has sufficient information to comment on the quality of care at Prime Healthcare facilities, as it has done in numerous reports which it has made public." "In short," she stated, "it appears that you are seeking to impose a tremendous burden on Prime to gather information that you already have in your possession or that is readily available to you from your members." She therefore asked the Union to "more specifically identify your concerns." (Jt. Exh. 6; Tr. 106–107.)

Salm replied a few days later, on May 9. She advised Schottmiller that 121RN had not yet determined what proposals it would make regarding the existing health plans; "indeed," the Union was seeking the requested information "to properly evaluate the existing plans to determine whether to even propose changes."[23] Salm also further explained why the specific information requested regarding cost, access, and quality of care was relevant and necessary to such an evaluation. Salm explained that the requested information about claims and payments for care at Prime facilities was "critical to determining plan costs, the allocation of those costs, administrative efficiencies, and to measuring quality of care." With respect to the requested information about claims and payments for care at non-Prime facilities, Salm explained that this information was needed because "employees must go through various administrative processes and often pay increased co-pays and deductibles for out-of-network or non-Prime hospital coverage," and "our members have raised numerous complaints about the limited access to certain services within the Prime Network." With respect to the requested information about quality of care at Prime facilities, Salm explained that the requested information was necessary because "unit employees in the EPO plan may utilize any of the hospitals within the Prime Network," not just Encino, "there are many other non-bargaining unit employees that also provide care," and "our members do not have access to the aggregated data requested." Salm also noted that the existing plans had "not been in existence for all that long," the unit employees had "only limited experience utilizing Prime facilities," and the Union therefore had "a duty to

[23] Salm also expressed concern that Schottmiller's response indicated that "the Hospital has adopted a take-it-or-leave-it stance concerning health insurance with no intent to even consider alternative options or views," a position that "would be antithetical to good faith bargaining." However, aside from the refusal-to-provide information allegations, there is no allegation in this proceeding that Encino has bargained in bad faith over healthcare.

carefully evaluate the quality of care at Prime hospitals." As for Schottmiller's reference to UHW's recent reports, Salm noted that 121RN, not UHW or the SEIU International, was the bargaining agent for the registered nurses, and that 121RN had not itself issued any reports about the quality of care at Prime hospitals. (Jt. Exh. 7; Tr. 107–108.)

Schottmiller responded about a week later, on May 17. She rejected Salm's explanations on the grounds that they were "conclusory" and suggested that Salm "misunderstood our questions and position." With respect to the requested information about claims and payments for care at Prime facilities, she disagreed that cost can be a measurement of quality of care. Further, she argued that the requested information about Prime's costs was not needed to propose reductions in the cost of benefits; that short term, direct costs are not necessarily the driver in health care planning"; that "many threshold issues should be resolved before addressing costs"; and that it appeared the Union was seeking "information that would violate the collective bargaining privilege, our own cost analysis." With respect to the requested information about employee access to Prime care, she likewise argued that 121RN could make bargaining proposals without the information. She also objected to Salm's failure to provide more detail regarding employee complaints about limited access, and made a "formal request for information relating to all the complaints." She likewise objected to Salm's failure to provide information regarding employee complaints about quality of care, and made a "formal request" for "all information received by SEIU 121RN which raises concerns regarding the quality of care in the Prime Network." Finally, Schottmiller accused Salm of being "disingenuous" regarding the relationship between 121RN and the SEIU, and requested "any communications between SEIU 121RN and the SEIU, any of the SEIU's affiliate organizations, or any third parties, regarding the quality of care provided at Prime." (Jt. Exh. 8; Tr. 108–109.)

Salm replied a few weeks later, on June 2. With respect to the cost of the Prime health care plans, she repeated her earlier explanation and assured Schottmiller that the Union was "not seeking analysis you have prepared for purposes of bargaining." Regarding employee access to care, she again explained that "going out of network for care often entails more cost to employees and we are entitled to see how often and for what reasons this is occurring." As for Schottmiller's request for more detail about employee complaints, Salm stated that the Union would review and respond to the request if made separately, but that it had "no bearing on the relevance of the Union's request" for information. Finally, with respect to quality of care, Salm repeated that the requested information "is relevant to analyzing existing health plans," and would allow the Union "to better understand the level of care at Prime facilities." She did not address Schottmiller's additional "formal" requests for information about the Union's requests for information on that subject. (Jt. Exh. 9; Tr. 109–110.)

Schottmiller responded a month later, on July 1. She stated that it was "readily apparent," based on Salm's responses, that 121RN was engaging in a "fishing expedition in an attempt to create a problem where none exists." Specifically, regarding the cost of the Prime healthcare plans, Schottmiller said she still did understand why 121RN was seeking the requested information, as "the NLRA does not require the employer to adopt the lowest cost plan, allocate costs in any way, or obtain administrative efficiencies." Regarding quality of care, Schottmiller acknowledged that the requested data "may be of abstract interest to a statistician." However, she stated that it was "not the best evidence" for the Union to evaluate the quality of care, and repeated that the "best source" of information would be the Union's "own unit members." Schottmiller also objected to 121RN's failure to provide the information requested

in her May 17 response regarding employee complaints about access and quality of care. Finally, she made several additional "formal" requests for information. Specifically, she requested "all quality of care information you have obtained from bargaining unit members and other persons for purposes of your analysis." She also requested "any similar requests served on other employers," and "any efforts made by SEIU 121RN to develop similar information with respect to any plans covering its members," particularly "the extent to which SEIU 121RN developed the same information from Aetna or PacifiCare, which previously provided benefits to the bargaining unit." (Jt. Exh. 10; Tr. 110.)

At this point, Salm decided it would not be productive to continue going back and forth, and therefore did not reply to Shottmiller's July 1 response. Nor did 121RN provide the information Schottmiller requested. However, the Union did not withdraw Salm's April 2011 request, and in fact filed an unfair labor practice charge against Encino over the matter in late September 2011 (Tr. 111, 156, 621; GC Exh. 1(a)).

Nevertheless, the parties continued to bargain over healthcare. As expected, in or around late 2011, Encino proposed continuing the current plans, with an increase in employee premiums. Consistent with its previous information requests, 121RN raised concerns about the proposal during negotiations with respect to cost, access, and quality of care. Approximately 2 years later, in February 2014, the Union also submitted its own "package proposal for wages and health care benefits" to Encino. The Union's proposal agreed to maintain the current EPO and PPO plans for the life of the contract, but with specified limits on the amounts, if any, employees would pay for premiums, copays, and deductibles in each year. Encino has not to date accepted the proposal, however, and the Union still wants the information Salm originally requested in April 2011. (R. Exh. 755; Tr. 170–171, 556, 561, 616–617, 621–623.)

In agreement with the General Counsel, I find that Encino had an obligation under the Act to provide 121RN with all of the information requested in Salm's April 2011 letter. There was nothing unusual about Salm's request for information about Encino's costs of providing healthcare to unit employees, and the Board has repeatedly held that such information is presumptively relevant, particularly during contract negotiations. See, e.g., *One Stop Kosher Supermarket*, 355 NLRB 1237 (2010) (the cost of health insurance to the company and to the employees); *Castle Hill Health Care Center*, 355 NLRB No. 196, slip op. at 29 (2010) (cost to the employer for unit employees' single health insurance coverage); *Saipan Grand Hotel,* 326 NLRB 80 (1998) (cost per hour of providing health insurance to unit employees); *Martin Marietta Energy Systems*, 316 NLRB 868, 874 (1995) (employer's costs under its self-insured healthcare plan, particularly those including large claims and the amounts paid to certain providers); *General Dynamics Corp*., 270 NLRB 829, 833 (1984) (the amount of the fee employer negotiated with the insurance company for actuarial, consulting, and other administrative services rendered with respect to the employer's medical insurance program); *North American Soccer League*, 245 NLRB 1301, 1306 (1979) (the claim experience under each category of insurance provided to players and/or their families, the overall cost to the employers of each category of insurance provided, and a description by transaction of any claims denied by the insurance carriers and/or the clubs providing the insurance for each category in question); *Nestle Co.,* 238 NLRB 92, 94 (1978) (insurance claims and premiums paid at the plant); and

Swift & Co., 124 NLRB 394 (1959), enfd. in relevant part, 277 F.2d 641, 645 (7th Cir. 1960) (cost to the employer of the healthcare benefits paid to unit employees under the current plan).[24]

As for Salm's requests for information about unit employees' access to Prime facilities and the quality of care at those facilities, that information was obviously relevant given that the employees were required under the Prime EPO plan to obtain medical treatment at Prime facilities. And to be sure Encino did not miss the obvious relevance of the information, Salm clearly explained it to Schottmiller.

Further, Encino has failed to establish any legitimate basis for not providing the requested information to 121RN. Encino argues that it was not required to provide the requested information because Salm failed to adequately respond to Schottmiller's requests for "a proper explanation" of its relevance or produce information in response to her requests. However, given that the information requested in Salm's April 2011 letter was presumptively and/or facially relevant, 121RN had no duty to provide any further explanation or information regarding its relevance to Schottmiller; rather, the burden was on Encino to show why the information was not relevant. See, e.g., *Castle Hill Health Care Center*, above; and *Regency Service Carts, Inc.*, 345 NLRB 671, 674 (2005). Encino has failed to do so.[25]

Encino also argues that it had no duty to provide the requested cost information because Prime itself provided the healthcare to employees, and thus the requested cost information was "akin to" "proprietary" "profit and loss information," which an employer has no duty to disclose absent a plea of poverty, citing *American Polystyrene Corp*., 341 NLRB 508 (2004), union's ptn. for review granted and remanded 467 F.3d 742 (9th Cir. 2006). However, as indicated by the cases cited above, "it is not always necessary that the [c]ompany put the cost of its proposals in issue, or even refuse [u]nion demands on the ground that they are too costly," to require disclosure of information about the cost of insurance benefits. *NLRB v. General Electric Co.,*. 418 F.2d 736, 750 (2d Cir. 1969), cert. denied 90 S.Ct. 995 (1970). Encino cannot avoid its statutory obligations to provide such presumptively relevant cost information to the Union simply because it chooses to provide healthcare to its employees directly through Prime, its parent company, rather than through other providers. If Encino was concerned about the potential disclosure of "proprietary" cost information to competitors, it was obligated to timely raise those concerns and seek an accommodation with the Union. See, e.g., *Howard Industries, Inc.,* 360 NLRB No. 111 (2014), citing *Pennsylvania Power Co*., 301 NLRB 1104, 1105–1106 (1992). There is no evidence that it ever did so.

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[24] See also *U.S. Testing Co*., 324 NLRB 854, 859 (1997), enfd. 160 F.3d 14 (D.C. Cir. 1998), where the Board found that the union was entitled to medical claim and payment information regarding nonunit employees as well as unit employees.

[25] Encino does not repeat Schottmiller's initial argument, in her April 15 response, that the information requested by Salm was irrelevant to the contract negotiations because Encino would never change its position regarding the Prime EPO and PPO plans. In any event, the argument is without merit. As the Board stated in *Regency Service Carts,* 345 NLRB at 674–675:

> Information concerning bargained matters is relevant precisely because such information can enhance the prospects for agreement. Irrespective of whether the information may prompt one party to yield or the other party to do so, the information is equally relevant.

Encino also argues that it was not required to provide the requested information because "the record evidence demonstrates" that the request was "not made to facilitate good faith bargaining, but instead to abuse the process." In support, Encino cites the fact that Salm requested Medicare discharge (MS-DRG) data, the same type of data that UHW had requested at Centinela and used to attack Prime's quality of care and coding practices.[26] Encino argues that it therefore had "reason to believe" that 121RN's request was made for a similar "nefarious purpose." However, the MS-DRG data requested by Salm would have eventually become available from governmental or other public sources (Tr. 167–168). Further, as discussed below, Respondents have failed to establish that UHW's reports based on MS-DRG and other data were false or incorrect.

In any event, a union is presumed to act in good faith in requesting information. *Mission Foods*, 345 NLRB 788 (2005). And the mere fact that UHW had used similar MS-DRG data to issue critical reports about Prime was insufficient to rebut that presumption or justify its failure to provide the information to 121RN. See also *AK Steel Corp.,* 324 NLRB 173**,** 184 (1997); *Central Manor Home for Adults,* 320 NLRB 1009, 1011 (1996); and *Associated General Contractors of California*, 242 NLRB 891 (1979), enfd. in relevant part 633 F.2d 766 (9th Cir. 1980), cert. denied 101 S.Ct. 3049 (1981) and cases cited there (employer must provide requested information to the union if it is relevant to and requested for the purpose of collective bargaining, even if the union also has other reasons for requesting the information).[27]

Finally, Encino argues that the subsequent history, specifically "the parties' continued negotiations regarding the EPO and PPO health plans" after Salm's April 2011 request, proves that the requested information was not relevant and necessary to bargaining. However, this argument is likewise without merit. See *Castle Hill Health Care Center*, and *Regency Services Carts*, above, and cases cited therein. See also *Oil, Chemical & Atomic Workers Local 6-418 v. NLRB*, 711 F.2d 348, 357 fn. 17 (D.C. Cir. 1983).

2. The January 12 and 25, 2012 information requests by UHW

During 2011, Prime made its healthcare benefits expert, Tammy Valle, available at a few of the bargaining sessions to answer UHW's questions. However, on November 15, 2011, Schottmiller notified Ruppert by email that Valle would not be attending any further sessions, and that if UHW had any further healthcare questions for her, they should be submitted in writing (Jt. Exh. 11; Tr. 580–581, 635–636).

A few months later, Ruppert gave Schottmiller the subject January 12 and 25, 2012 written information requests. The requests were identical except that one was for Encino and the other for Garden Grove, and sought a variety of information regarding employee access to care at

[26] Encino also argues (somewhat inconsistently) that MS-DRG data is irrelevant to evaluating quality of care. However, it bases this argument solely on Schottmiller's testimony that her chief nursing officer told her so (Tr. 583). Needless to say, such uncorroborated, self-serving, and conclusory hearsay is entitled to little if any weight.

[27] *Coca-Cola Bottling Co. of Chicago*, 311 NLRB 424 (1993), cited by Encino, is clearly distinguishable. There, the union's information request for retirement-benefit cost information indicated on its face that it was made at the behest of the employer's competitors.

Prime facilities and the premium and other costs of the EPO and PPO plans. Specifically, Ruppert requested the following:

1. What distance limits are there before a referral to an Anthem physician can be made?

2. What is the referral process for physicians out of the Prime network?

3. What is the appeal process for referrals?

4. Who determines these appeals?

5. How many referrals were approved / denied in the plan referral review process in the last plan year for which this information is available?

In bargaining discussions, Tammy Valle explained that premium amounts were determined by census data, group experience data and actuarial calculations.

6. How were the premiums determined for the EPO? Please provide supporting data.

7. How were the premiums determined for the PPO? Please provide supporting data.

8. What percentage of the total premiums are the proposed employee premiums?

9. What is the annual or monthly cost of the plan to the hospital. Please break this information down for each plan and for each plan coverage option available.

10. How are the fee-for-service charges determined for participating physicians in the Prime Network?

11. Are these the "allowable charges" in the definitions section of the SPD [summary plan description]?

12. What urgent care facilities participate in the EPO plan?

13. What were the costs of the three categories in the prescription plan for over the last two plan years?

14. Please provide the step process guidelines for approval of out of formulary drugs[.]

15. Documents showing the dollar amount of monthly administrative costs (including the definition of "administrative costs") during the prior 2 insurance contract years and showing these costs as a percent of the amount of claims paid and additionally, all documents showing any other costs incurred other than claims paid.

> 16. Documentation as to the reserves maintained for the payment of claims and for any stop-loss insurance carried by the employer including coverage terms and cost.

(Jt. Exhs. 12, 15; Tr. 190–192, 203–204.)[28]

Schottmiller responded approximately a month later, on February 20. As with 121RN's previous request, she did not attach or provide the foregoing requested information.[29] Rather, with respect to access to care, she objected to Ruppert's failure to "identify the issues which have given rise to [UHW's] concerns or detail any specific problems under the EPO plan," and made a "formal request" that UHW provide "all information regarding and documentation underlying [UHW's] purported access to care concerns." She also argued that UHW could make alternative bargaining demands without the information, and that "none of the information" that UHW requested was "in any way relevant to any plan that may be proposed by the union." With respect to the requested information regarding premiums, Schottmiller stated that the premium costs were "based on a determination made in the best judgment of the company as to what would make [the hospitals] an attractive employer." As for the requested information regarding the cost of the EPO plan to the hospitals, physician fee-for-service charges, and reserves for payment of claims, she argued that such information is likewise "not relevant to the parties' bargaining, and asked Ruppert to "explain the purpose for which [UHW] is requesting this information." (Jt.Exh. 13, 16; Tr. 192.)

Ruppert replied a month later, on March 20. He explained that the information requests were based on discussions the union's bargaining team had previously had at the bargaining table with Valle. He also explained at length the relevance and necessity of the requested information:

> The costs for utilizing Anthem physicians under the EPO are greater than those incurred with participating Prime physicians. There are two obvious reasons one might need to utilize this option, services or specialists not available in the Prime Network or at too great a distance. Accordingly we asked questions addressing the availability of doctors and specialists and what the distance policy was for referrals to an Anthem provider. This information could be in the form of claims amounts and diagnostic codes for all claims performed at a Prime facility and separately the same information for claims at Anthem providers and out of the network.
>
> Additionally you will recall discussion of the referrals to Anthem doctors. Our members were initially led to believe that they could continue to see their Anthem doctors if they selected the EPO plan, primary care physician (PCP) referral

[28] Ruppert testified that he did not ask for information about the quality of care at Prime facilities because he had already asked for such information at Centinela, and because he wanted to minimize Prime's concerns about UHW's motives for requesting information at Encino and Garden Grove (Tr. 230–231, 247).

[29] Schottmiller did, however, provide other information requested in Ruppert's January 12 and 25 letters.

requirements notwithstanding. Now they are receiving bills indicating the plan will not pay their Anthem doctors due to a lack of a PCP referral. In our discussion, Ms. Valle reported the healthcare plan was working through these issues but that the PCP referral requirement was going to be strictly adhered to.

Our questions addressing the referral process, the appeal process for referrals, the individuals who determine these appeals and the history of appeal results are based on these very real concerns and experiences. You may recall that during our discussion of these "specific problems" at the bargaining table was [sic] suggested to be an HR issue, yet your letter maintains we have not brought [any] specific issues or general concerns to the bargaining table.

During the discussions Ms. Valle explained the elements considered to determine the premium amounts for the proposed plans. (Census data, claims experience, custom group experience, actuarial projections, etc.) We were told these calculations could be made available and asked for them in our request.

Your proposal includes a closed formulary for prescription coverage and eliminates current plans with different levels of prescription coverage. We have requested "step process guidelines" for drugs not in the formulary and historical costs for of the three categories of prescriptions in the current plan. Since you are proposing a different coverage structure with cost shifting we need to know what those costs have been.

As a self-insured provider, Prime is required to maintain stop loss insurance for claims. This is in part for the protection of our members. Documentation of the reserves is an appropriate request.

Costs of the plan are a topic of bargaining. When we asked why deductibles and other charges are so high for the proposed PPO plan the answer was because we want employees to be in the EPO. We need to understand the basis of the charges and the actual costs of the medical services and administrative charges to value your proposal before we can propose changes to ensure that our members are not priced out of coverage for their families or necessary coverage for themselves. Accordingly we asked for the annual or monthly cost to the hospital of each plan and for each plan coverage option available.

Documents showing the dollar amount of monthly administrative costs (including the definition of "administrative costs") during the prior two insurance contract years, showing these costs as a percent of the amount of claims paid were requested.

We requested urgent care locations participating in the EPO. In most healthcare plans preventive care is an element and efforts to reduce costs are integrated into the plan. Urgent care is a common cost reduction. If costs are reduced the pressure is usually reduced for premiums or other cost shifting.

. . . .

> Your letter states that answers to our questions are in the SPD and if something is unclear our question should be specific. We asked about the fee for service charges in the Prime network and whether or not they were the "Allowable charges" in the definitions section of the SPD without receiving an answer. At your suggestion we will work our way through the 2011 SPD again while we wait for a copy of the 2012 SPD.

(Jt. Exh. 14.)[30]

Ruppert never received a response from Schottmiller. Nor did UHW ever receive the requested information. Accordingly, like 121RN, on July 15, 2012, UHW filed an unfair labor practice charge over the matter. (Tr. 193–196, 205–207, 249–250; GC Exh. 1(v).)

In agreement with the General Counsel, I find that Encino and Garden Grove were obligated under the Act to provide UHW with the information requested in Ruppert's January 2012 letters. Like Salm's earlier requests on behalf of 121RN, Ruppert's requests for information about access and costs under Prime's EPO and PPO plans were plainly relevant on their face. Moreover, like Salm, Ruppert fully explained their relevance.

Further, as with Salm's requests, Respondents have failed to establish a legitimate basis for not providing any of the information requested by Ruppert. Respondents assert that the information was not relevant or necessary for UHW to prepare a bargaining proposal as Respondents had already provided UHW with the SPDs and made Valle available to answer questions during bargaining sessions. However, Respondents do not contend that the SPDs or Valle provided all of the information Ruppert requested, and Ruppert's March 20 response to Schottmiller fully explained why the additional information remained relevant and necessary. In these circumstances, Respondents could not simply ignore Ruppert's request, but were required to comply with the request to the extent it encompassed additional relevant and necessary information that had not already been provided. See *Mission Foods*, 345 NLRB at 789; and *Keauhou Beach Hotel*, 298 NLRB 702 (1990), and cases cited there.

Respondents also argue that the hospitals' costs of providing healthcare constitute confidential proprietary information. However, I reject this argument for the same reasons I rejected it with respect to Salm's request for similar information. Again, there is no evidence that Respondents ever raised their confidentiality concerns or sought an accommodation with UHW.

III. The Respondents' Disqualification Defense

As indicated above, Respondents also assert that they lawfully ceased anniversary step wage increases in the service and technical units and refused to provide UHW with the requested healthcare information because UHW was disqualified from representing the unit employees due to its participation in the Coalition's strategic partnership with Kaiser and its corporate campaign to disparage Prime's reputation. I reject this defense for the following reasons.

[30] See also the similar reply Ruppert sent to Schottmiller on March 28 with respect to the Garden Grove negotiations (Jt. Exh. 17).

First, Respondents failed to present any evidence that UHW's asserted disqualifying conflict of interest and/or conduct had anything whatsoever to do with Respondents' alleged unlawful actions. As discussed above, the record shows that Respondents ceased the anniversary step wage increases based on their interpretation of the expired contract language, and that they refused to provide UHW with the requested information about the Prime EPO and PPO plans because they did not believe it was relevant or necessary to the parties' new contract negotiations. Although Respondents at one point questioned and requested information from UHW about whether bargaining had been compromised by the relationship between UHW, SEIU, and Kaiser, and subsequently even filed a federal antitrust action against them, there is no evidence that Respondents ever actually asserted that UHW was disqualified from representing the unit employees. As of the hearing, Respondents continued to recognize and bargain with UHW.[31]

In these circumstances, Respondents cannot now assert as a defense to the discreet 8(a)(5) allegations in this proceeding that they never had to recognize and bargain with UHW in the first place. Until such time as they lawfully refuse to bargain and withdraw recognition from UHW, they must comply with their bargaining obligations under the Act. See *Greyhound Lines, Inc*., 319 NLRB 554, 556–557 (1995) (rejecting, for the same reasons, the employer's defense that the union was disqualified due to its conflict-of-interest and violent conduct), and cases cited there. Compare also the following cases where the Board found that the employer properly raised and established that the union was disqualified: *Bausch & Lomb Optical Co*., 108 NLRB 1555 (1954) (employer refused to bargain with the union because it established a company that directly competed with the employer); *Catalytic Industrial Maintenance Co*., 209 NLRB 641 (1974) (employer filed motion to revoke the union's certification and refused to recognize and bargain with the union, which also represented the employees of the company that contracted the work to the employer, because the union sought to end the subcontract and have the contractor's employees, rather than the employer's employees, perform the work); *Valley West Welding Co*., 265 NLRB 1597 (1982) (employer filed petition to revoke the union's certification and withdrew recognition from the union for essentially the same reasons as in *Catalytic*); and *Pony Express Courier Corp*., 297 NLRB 171 (1989) (employer refused to recognize and bargain with the newly certified union because, among other things, the union's founder and business agent was the owner and president of a consulting firm that advised respondent's customers and competitors).[32]

[31] UHW likewise continued to serve as the unit employees' representative at Encino and Garden Grove, and presumably expended substantial resources, garnered from unit employees' dues, in doing so.

[32] The Board, of course, has also addressed the conflict-of-interest issue when it has been timely raised by the employer in the initial representation proceeding. See, e.g., *Visiting Nurses Association, Inc*., 254 NLRB 49 (1981) (finding that union was disqualified because its regional association had established a nurses registry that directly competed with the employer in providing nursing services). See also *Massachusetts Society for Prevention of Cruelty to Children*, 334 NLRB No. 141 fn. 1 (2001), enfd. 297 F.3d 41 (1st Cir. 2002) (rejecting employer's contention, in test-of-certification refusal-to-bargain proceeding, that the union had a disqualifying conflict of interest, because the employer failed to raise the issue in the underlying representation proceeding).

Second, even assuming arguendo that Respondents may properly assert a disqualification defense in the present circumstances, they have failed to prove the defense.[33] As indicated by Respondents, the cited provisions of the LMP and related action plans, as well as the substantial financial contributions by Kaiser and its employees to the joint labor-management partnership trust fund, indicate that the Coalition and Kaiser have partnered in a serious and meaningful way to make Kaiser the preeminent healthcare provider and employer at the expense of competitors, including Prime. However, labor-management partnerships to enhance employer competitiveness are encouraged under the Labor Management Cooperation Act of 1978.[34] As the Board stated in addressing the lawfulness of a joint employer/union logo in *BellSouth Telecommunications, Inc*. 335 NLRB 1066, 1070 (2001), enf. denied *Lee v. NLRB*, 393 F.3d 491 (4th Cir. 2005):

> [T]he Labor Management Cooperation Act of 1978 encourages joint labor-management initiatives. The stated purposes of the Act are, inter alia, to expand and improve working relationships between workers and managers in the organized sector of the economy, to improve communication between representatives of labor and management, and to enhance the involvement of workers in workplace decisions. The underlying policy assumption is that innovative joint approaches will enhance organizational effectiveness and competitiveness. By agreeing to the joint logo display, BellSouth and the CWA were demonstrating to the public their commitment to working together to enhance the Company's competitive advantage. In this respect, they were acting in accord with federal labor policy.

It may be that the Kaiser LMP stretches the purposes and policies of the Labor Management Cooperation Act too far by obligating UHW and other members of the Coalition to assist Kaiser, not only in meeting the competition through increased cooperation in the workplace, but in beating the competition through marketing and mergers and acquisitions. Indeed, the LMP is arguably inconsistent with the purposes and policies of that Act to the extent it may effectively preclude Prime and other healthcare providers from entering into a similar partnership agreement with UHW or other signatory unions in the Coalition.[35] After all, there can be only one preeminent healthcare provider and employer. But, Respondents (who as indicated above bear the burden of persuasion regarding their affirmative defense) do not make this argument; indeed, they do not even acknowledge, much less address, the Labor Management

[33] It is the employer's burden to prove the affirmative defense, and the burden is a heavy one. *Supershuttle International Denver, Inc*., 357 NLRB No. 19, slip op. at 2 (2011), citing *Garrison Nursing Home,* 293 NLRB 122 (1989).

[34] 29 U.S.C. § 175(a). See also 29 U.S.C. § 186(c)(9), which provides that payments to labor management committees established for the purposes of the Labor Management Cooperation Act are excepted from the restrictions on employer payments to unions.

[35] UHW is not unique in representing employees of competing employers. Indeed, it is common for unions to do so. See *Supershuttle,* above, slip op. at 3; and *CMT, Inc*., 333 NLRB 1307, 1308 (2001), and cases cited there.

Cooperation Act.[36] Nor do they cite any authority disqualifying a union because of a labor-management partnership agreement with a competitor.

As for UHW's "corporate accountability campaign" against Prime, Respondents have failed to establish that there was anything disqualifying about it. Public campaigns to pressure an employer to accede to employee bargaining demands are nothing new. See, e.g., *Rochester Telephone Corp*., 333 NLRB 30 (2001) (union engaged in corporate campaign to pressure employer to modify its last bargaining proposal).[37] And, within certain bounds, they are protected by the Act. See *Jimmy John's*, 361 NLRB No. 27 (2014); *Valley Hospital Medical Center*, 351 NLRB 1250, 1252 (2007), enfd. 358 Fed. Appx. 783 (9th Cir. 2009); and *Montauk Bus Co*., 324 NLRB 1128 (1997), and cases cited there.

Here, although UHW's press releases and reports were highly critical of Prime, they addressed matters plainly relevant to the unit employees' terms and conditions of employment. Infection control is obviously of concern to hospital staff as well as patients, and the unit employees themselves obtained medical care at Prime facilities under the terms of the hospitals' EPO plan. Moreover, the reports and press releases specifically stated that the Union was involved in labor disputes with Prime and explained the relationship or connection between those labor disputes and the concerns raised in the reports. Indeed, Prime itself publicly stated at the time, and continues to take the position, that UHW's corporate campaign was intended to pressure the hospitals to accede to the Union's bargaining demands.

Further, Respondents have failed to show that UHW's reports and related actions to prevent Prime from acquiring additional hospitals exceeded the bounds of protected conduct. As indicated above, the reports relied on publicly available Medicare data, and there is no contention or evidence that UHW misreported that data. As for the reports' conclusions, Respondents never established that they were incorrect. As previously noted, Respondents offered into evidence a December 2010 letter from a private accreditation organization stating that the organization had conducted a 1-day "on-site survey" regarding allegations of upcoding/overbilling for diagnosis and serious infection control issues at one of Prime's hospitals and found them "not substantiated." However, Respondents presented no testimony or evidence explicating the referenced allegations or the organization's "on-site survey" or findings. Moreover, the letter itself states that the survey was done at only one hospital. Thus, the letter is plainly insufficient to establish that UHW's conclusions were incorrect.

[36] The Respondents failure to address the Labor Management Cooperation Act is remarkable, not only because UHW has repeatedly cited it as grounds for rejecting Respondents' disqualification/conflict-of-interest defense (see, e.g., GC Exh. 1(eeee)), but because it was one of the grounds cited by the federal district court for dismissing Prime's amended complaint in the antitrust case. See 2013 WL 3873074 at *8.

[37] See also James Brudney, *Collateral Conflict: Employer Claims of Rico Extortion Against Union Comprehensive Campaigns*, 83 S. Cal. L. Rev. 731 (2010); Cynthia Estlund, *The Ossification of American Labor Law*, 102 Colum. L. Rev. 1527, 1605 (2002); and Elizabeth Mullikin, *The Corporate Organizing Campaign: A Double-Edged Sword*, 40 S.C. L. Rev. 449 (1989).

Respondents also presented a statistician[38] to testify as an expert about the reports. However, the statistician did not testify that the reports' conclusions about the septicemia and malnutrition data were incorrect; indeed, he admitted that he did not even attempt to determine if they were incorrect (Tr. 666). Rather, he testified that he only examined the reports to determine if they applied "accepted statistical principles" by differentiating between actual and reported statistics, adequately considering every alternative explanation for the data, and critically examining the underlying assumptions for the conclusions reached. Although he testified without contradiction that the reports failed to do so,[39] Respondents cite no authority holding union representatives to the same standards as statisticians. Cf. *Jimmy John's*, above (rejecting the dissent's argument that certain public statements made by the sandwich-shop employees, which suggested that the employer's failure to grant them sick leave could result in contaminated sandwiches, were unprotected because they were not supported by statistical proof or empirical analysis).

Finally, Sahara *Datsun, Inc*., 278 NLRB 1044, 1046 (1986), the primary case cited by Respondents, is clearly distinguishable. There, the Board held that the employer was not required to negotiate or otherwise deal with a union agent who published personal allegations against the employer's owner that were unsubstantiated, based on rumors and innuendos, and unrelated to the employees' terms and conditions of employment. Here, as discussed above, the Union's reports addressed issues relevant to the unit employees' own healthcare, and accurately

[38] William B. Farley, PhD, president of Analysis & Inference, Inc., a company providing consulting services in statistics to corporations, government agencies, and nonprofit organizations.

[39] At Respondents' request, I barred both UHW and the General Counsel from cross-examining Respondents' witnesses or presenting any contrary evidence regarding Respondents' disqualification defense as a sanction for UHW's admitted contumacious refusal to produce documents responsive to several paragraphs of Respondents' subpoenas duces tecum or to present UHW President Dave Regan to testify in response to Respondents' subpoena ad testificandum. I also ruled that Respondents would be entitled to adverse inferences that the undisclosed documents and Regan's testimony would have supported Respondents' defense. However, I reserved ruling on precisely what those adverse inferences would be, advising the parties to address the matter in their post-hearing briefs. See Tr. 19–76, 270–275, 284–307, and my previous unpublished orders dated April 29, 2013 (Jt. Exh. 24(I)), October 29, 2013 (GC Exh. 1(iiii), exh. C), December 4, 2013 (GC Exh. 1(dddd)), March 7, 2014 (GC Exh. 1(jjjj)), and May 23, 2014 (GC Exh. 1(ggggg)); and the Board's unpublished orders dated June 28, 2013 (2013 WL 3293565) and February 25, 2014 (2014 WL 722107) denying UHW's special/interlocutory appeals.) In their post-hearing brief, Respondents argue that an adverse inference should be made that "UHW's allegations of fraud and pervasive patient care problems are baseless and designed for no other purpose than to damage Prime." However, I find that such an adverse inference is inappropriate under the circumstances. As discussed above, the reports relied on public Medicare data and Respondents admit that at least one objective of the reports was to bring pressure on the hospitals to accede to UHW's collective-bargaining demands. Thus, like an economic strike, the fact that the reports and related actions were intended to cause economic harm to the company does not necessarily render them unprotected or disqualifying. Further, Respondents and their parent Prime, who own and manage the hospitals, are uniquely in possession of all the information relevant to whether the stated conclusions in UHW's reports about Prime are baseless.

cited publicly available Medicare data. Further, while the reports may not have fully considered every alternative explanation for Prime's unusually high rates of septicemia and malnutrition other than upcoding or infection control problems, they did consider alternative explanations. Moreover, the reports convinced state and federal authorities familiar with the field to initiate formal investigations, at least some of which are apparently still ongoing (see fn. 14, supra). See also *St. Johns Hospital*, 281 NLRB 1163 fn. 1 (1986) (finding it unnecessary to pass on the judge's discussion of whether a union's unsubstantiated disparaging public comments about an employer would warrant disqualifying the union as representative of the employer's employees).

Accordingly, for all the foregoing reasons, I reject the Respondents' disqualification defense to the allegations involving UHW, and find that Respondents violated the Act as alleged in all respects.[40]

CONCLUSIONS OF LAW

1. Respondent Encino has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act, by:

(a) Unilaterally ceasing, since March 31, 2011, to grant anniversary step wage increases to eligible employees in the registered nurses unit without providing 121RN notice or an opportunity to bargain;

(b) Unilaterally ceasing, since November 17, 2011, to grant anniversary step wage increases to eligible employees in the service and technical unit without providing UHW notice or an opportunity to bargain;

(c) Failing and refusing to furnish 121RN the relevant and necessary information it requested on April 5, 2011; and

(d) Failing and refusing to furnish UHW the relevant and necessary information it requested on January 12, 2012.

2. Respondent Garden Grove has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act, by:

(a) Unilaterally ceasing, since November 17, 2011, to grant anniversary step wage increases to eligible employees in the service and technical unit without providing UHW notice or an opportunity to bargain;

(b) Failing and refusing to furnish UHW the relevant and necessary information it requested on January 25, 2012.

[40] I also deny Respondents' request for fees and costs.

REMEDY

The appropriate remedy for the violations found are orders requiring Respondents Encino and Garden Grove to cease and desist and to take certain affirmative action, including providing the Unions with the requested information and making whole eligible unit employees for the failure to pay them anniversary step wage increases. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest compounded daily as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and *Kentucky River Medical Center,* 356 NLRB No. 8 (2010). As set forth in *Tortillas Don Chavas*, 361 NLRB No. 10 (2014), Respondents must also compensate the employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters.

Accordingly, based on the foregoing findings of fact and conclusions of law and on the entire record, I issue the following recommended[41]

ORDER

A. Respondent, Prime Healthcare Services-Encino, LLC d/b/a Encino Hospital Medical Center, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally changing terms and conditions of employment of its employees in the registered nurses unit and service and technical unit represented by 121RN and UHW, respectively.

(b) Failing and refusing to provide 121RN and UHW relevant and necessary information on request.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide 121RN with the information it requested on April 5, 2011.

(b) Provide UHW with the information it requested on January 12, 2012.

(c) Resume granting anniversary step wage increases to eligible employees in the registered nurses unit and service and technical unit, and continue to grant such increases until such time as it has complied with its bargaining obligations under the Act.

[41] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Make whole eligible employees in the registered nurses unit and service and technical unit for its failure to grant them anniversary step wage increases since March 31 and November 17, 2011, respectively, in the manner set forth in the remedy section of this decision.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Encino, California copies of the attached notice marked "Appendix A."[42] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 31, 2011.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. Respondent, Prime Healthcare Services-Garden Grove, LLC d/b/a Garden Grove Hospital & Medical Center, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally changing terms and conditions of employment of its employees in the service and technical unit represented by UHW.

(b) Failing and refusing to provide UHW relevant and necessary information on request.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

[42] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide UHW with the information it requested on January 25, 2012.

(b) Resume granting anniversary step wage increases to eligible employees in the service and technical unit, and continue to grant such increases until such time as it has complied with its bargaining obligations under the Act.

(c) Make whole eligible employees in the service and technical unit for its failure to grant them anniversary step wage increases since November 17, 2011, in the manner set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Encino, California copies of the attached notice marked "Appendix B."[43] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 31, 2011.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 13, 2014

_____

Jeffrey D. Wedekind
Administrative Law Judge

[43] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX A

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT unilaterally change the terms and conditions of employment of our employees in the registered nurses unit and service and technical unit represented by SEIU Local 121RN and SEIU United Healthcare Workers-West (UHW), respectively.

WE WILL NOT fail and refuse to provide 121RN and UHW relevant and necessary information on request.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by the National Labor Relations Act.

WE WILL resume granting anniversary step wage increases to eligible employees in the registered nurses unit and service and technical unit, and continue to grant such increases until such time as we have complied with our bargaining obligations under the Act.

WE WILL make whole eligible employees in the registered nurses unit and service and technical unit for our failure to grant them anniversary step wage increases since March 31 and November 17, 2011, respectively, in the manner set forth in the Board's decision.

WE WILL provide 121RN with the information it requested on April 5, 2011.

WE WILL provide UHW with the information it requested on January 12, 2012.

PRIME HEALTHCARE SERVICES-ENCINO, LLC
D/B/A ENCINO HOSPITAL MEDICAL CENTER

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

11500 West Olympic Boulevard, Suite 600, Los Angeles, CA 90064
(310) 235-7352, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/31-CA-066061 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (310) 235-7424.

APPENDIX B

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT unilaterally change the terms and conditions of employment of our employees in service and technical unit represented by SEIU United Healthcare Workers-West (UHW).

WE WILL NOT fail and refuse to provide UHW relevant and necessary information on request.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by the National Labor Relations Act.

WE WILL resume granting anniversary step wage increases to eligible employees in the service and technical unit, and continue to grant such increases until such time as we have complied with our bargaining obligations under the Act.

WE WILL make whole eligible employees in the service and technical unit for our failure to grant them anniversary step wage increases since November 17, 2011, in the manner set forth in the Board's decision.

WE WILL provide UHW with the information it requested on January 25, 2012.

PRIME HEALTHCARE SERVICES-GARDEN GROVE, LLC D/B/A GARDEN GROVE HOSPITAL & MEDICAL CENTER

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

888 South Figueroa Street, 9th Floor, Los Angeles, CA 90017-5449
(213) 894-5200, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/31-CA-066061 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

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